

## REMARKS

In the outstanding Office Action, claims 35-80 and 92-101 were presented for examination. Claims 82-87 were withdrawn from consideration. Claims 35-80 and 92-101 were rejected under 35 U.S.C. §101 as nonstatutory.

The Office Action has been most carefully studied. In this amendment claims 82-87 have been cancelled, without prejudice, and claims 35-39, 41, 43-44, 63-64, 66, 68, 75 and 101 have been amended. The amended claims have been carefully written to meet the requirements for patentability. Accordingly, as will be discussed in detail below, it is believed that the application is clearly in condition for allowance.

### *Telephone Interview Summary*

In a telephone interview conducted on February 7, 2005 with the undersigned at applicant's request, Examiner Colbert kindly confirmed that the rejection under 35 U.S.C. §101 as to the claims being nonstatutory could be overcome, as implied in the action, by referencing the claimed method as being computer-implemented in the preambles and bodies of the independent claims. The Examiner also indicated that examination on the merits has not yet been completed and that an electronic database search was to be conducted.

Applicant's representative expressed surprise at the further delay implied and protested the continued piecemeal examination noting that the application is *nearly six years old*, that it was fully examined by Primary Examiner Akers, leading to agreement on allowable claims, and that the present examiner, in conducting an extraordinary second examination for reasons not made of record, has already issued three office actions, yet has not an completed examination on the merits.

Notwithstanding these issues, a summary description of the invention was

provided to the Examiner verbally and by faxed communication to facilitate the ongoing searching, in the hope of expediting matters. The summary statements provided are not to be understood to limit the invention which is defined by the claims and described in the specification of record.

Applicant understands that the new examiner, having not yet completed her examination on the merits, and desiring applicant's (willingly provided) assistance in describing the invention conceptually, for search purposes, does not yet have a full understanding of applicant's claimed invention such as is provided by reading applicant's entire specification and the record herein.

#### *Examiner's Interview Summary*

Receipt of the Interview Summary mailed February 11, 2005 is acknowledged.

By way of minor comment on the Examiner's interview description on the continuation sheet, it is noted that the, or rather, an inventive concept relates to the nature and use of the event-activated payment draft in the financing of the sale of a good or service which could be for import or export, or for domestic use. As best the undersigned recalls, the amendment was probably to be submitted in a few days, and in fact has taken a little longer.

#### *Request for Expeditious Handling in View of the Age of the Application ((6) Years)*

It is respectfully requested that further examination, if needed, which applicant believes it is not, be conducted expeditiously and completely. Applicant's representative stands ready to resolve by telephone any matters that can reasonably be resolved by telephone. By applicant's count (10) or more Office actions have already been mailed. It is also respectfully pointed out that the term of applicant's patent-to-issue is being eroded while the Office issues an unrelenting stream of Office actions.

Only fourteen years remain of the twenty-year term, with no apparent eligibility for a patent term adjustment. Throughout all these actions, no cogent and meaningful barrier to allowance of any of applicant's claims has yet been raised. Yet applicant still lacks the commercial recognition and impetus that might be provided by the award of the patent which is so clearly deserved for his novel and unobvious invention claimed herein. The Office's diligent assistance in remedying this manifest injustice is most earnestly solicited.

### *Claim Amendments*

In this amendment, claims 41, 62, 63, 64, 66, 68, 75, 101 have been amended to introduce into the listed claims and claims depending from them, explicit reference to computer-implementation of the claimed invention where technically appropriate. These amendments are made pursuant to the suggestions kindly made by the Examiner, which are greatly appreciated by applicant, for the purpose of expediting prosecution of this application by enabling the Office to more easily see that the claimed invention relates to statutory subject matter under 35 USC §101. It is believed abundantly clear that claims 41, 62, 63, 64, 66, 68, 75, 101, as now amended, define statutory subject matter under 35 USC §101.

It will be understood that the computer referenced in the amended claims may be any suitable data processing device or system such as is disclosed in the application or may become known to those skilled in the art as the art develops, including desktop, handheld, laptop and other portable devices such as personal digital assistants, cell phones and the like and intelligent appliances with adequate functionality, remote systems accessible through a local user interface, and internet-based systems.

Certain other claims have been amended for other purposes as will now be

explained.

Minor amendments have been made to Claims 35-38 and 41-44, without narrowing, to further define the prerelease payment draft as being a “latent” payment draft. This amendment makes explicit what was inherent in the claim before amendment namely the latency of the payment draft wherein what was a nonnegotiable instrument when drawn (clause a)ii)) is rendered negotiable by occurrence of the defined activating event (clause a)iv)).

Amended claim 41 defines an embodiment of the invention wherein the buyer can sign and accept the prerelease latent payment draft prior to formal issuance of the draft by the seller. The seller can then confirm issuance of the draft by signing it. This embodiment of the invention finds support at page 20, line 29 to page 21, line 25; page 28, lines 10-24; at page 29, lines 17-25; and elsewhere in the specification.

Minor amendments have been made to claims 95-97, without narrowing, by deleting the word “latent” in several instances, for technical consistency.

Claims 99-100 have has been amended, without narrowing, to make explicit what was inherent before the amendment, namely that in these claims the first bill of exchange, the second bill of exchange and the invoice are for the amount of the proforma invoice. Amended Claims 99-100 recite that there is a relationship between all four documents and that they have as a common element the value amount of the transaction.

Claim 100 has been further amended, without narrowing, to make explicit what was inherent before the amendment in light of the specification, notably at page 38,

lines 5-23, that if system comparison finds the invoice to be at variance with the proforma invoice, the buyer and the seller can by common agreement reinitiate the proforma invoice and 1<sup>st</sup> bill of exchange so as to make congruent the proforma, invoice, 1<sup>st</sup> bill of exchange, and 2<sup>nd</sup> bill of exchange. Thus, amended claim 100 defines a useful embodiment of the invention further defining the relationships between the several instruments employed in this embodiment of the inventive method, and providing a useful procedure for managing changes in the instruments.

***The Unamended Claims Also Defined Statutory Subject Matter Under 35 USC §101***

Notwithstanding the above-described amendments, it is applicant's view that all the claims clearly related to statutory subject matter in their form prior to this amendment. Furthermore, it is noted that prior to this amendment some claims, notably dependent claims 41, 43, 51, 62, 66, 99 and 100 called for computerization or employment of an electronic file or an electronic operation and thus clearly required or implied use of a computer or equivalent electronic data processing means.

Applicant is not aware of any requirement in the United States for a claim to have "a technological basis in the body of the claim" as appears to be required by the Office in the outstanding action. Nor has the Office provided any authority for this unusual requirement. Accordingly the nonstatutory subject matter rejection is believed improper and should be withdrawn for this reason alone.

Nevertheless, applicant's claims in both their unamended and amended forms undoubtedly have a technological basis in the body of the claim and cannot with any shred of reason be characterized as "involving no more than a mere manipulation of an abstract idea". Claim 35 defines in substantial technical detail the structure of a novel latent payment draft, i.e. a financial document, useful in the commercial and financial

arts, which is employed in a method of finance, and which has a defined functional interrelationship with the other defined claim features, including in particular the buyer and seller and the activating event. When the activating event occurs, the character of the latent payment draft changes, from non-negotiable to negotiable. This is a functional interrelationship. All other claims recite the functional utilization of one or comparable or equivalent documents, for example applicant's novel event-activated first and second bills of exchange.

It is to be noted that methods of finance are not abstract methods of calculation resulting in a mere number, but useful technological methods which provide money to individuals or entities in return for goods, services or commitments and usually result in money changing hands, enabling products or services to move through the economy.

Thus, Claim 35 has not been amended to recite computer implementation because claim 35 is believed clearly to relate to statutory subject matter under 35 USC §101, as will now be explained.

Claim 35, in clause a), calls for a) the buyer to provide a document, an event-activated, latent payment draft, to the seller or the seller's agent. Save for the latent payment draft which did not exist prior to the present invention, this is a conventional method step involving a physical transformation, the transfer of an object, a document which may be paper document, an electronic file or an equivalent thereof, from one person, party, corporate or other entity to another person, party, corporate or other entity. This is a physical step effected by my handing the document to you, by mailing, courier transmission, emailing or the like. Clearly, this step alone does not involve "no more than mere manipulation of an abstract idea".

Furthermore, claim 35 calls in clause a) iii) for the latent payment draft to be executed by the buyer. This requirement calls explicitly for an action to have been performed in furtherance of the method, namely the act of executing the document. The buyer must have appended their physical signature, stamp, mark or other indication of execution to a paper document, or performed an act complying with prevailing legal requirements for effecting an electronic signature of an electronic document, or have taken other comparable or equivalent action to effect execution of the latent payment draft. The act of execution clearly does not involve “no more than mere manipulation of an abstract idea”.

In addition, claim 35 clause b) calls for the seller to release the traded product for delivery to the buyer. A truck leaving a warehouse is not “mere manipulation of an abstract idea”. Sending an email with product files attached is not “mere manipulation of an abstract idea”. In fact, no operation involving a traded product, whose possible character is described in applicant’s specification, can, in applicant’s view, be properly characterized as “no more than mere manipulation of an abstract idea”.

Claim 35 includes other features of are clearly not “mere manipulation of an abstract idea”. For example, the occurrence of one of the events set forth in clause a) iv) is clearly not “mere manipulation of an abstract idea” any more than is the functional relationship between the occurrence of that event and the resultant change in status of the payment draft from being a latent, non-negotiable instrument prior to the event occurring to become a negotiable instrument after the event has occurred.

Comparable method steps that are clearly not “mere manipulation of an abstract idea” are liberally distributed throughout the other independent claims and the dependent claims. For example, claim 36 calls for the prerelease latent payment draft to

be “executed by the seller prior to the activating event” an additional method step requiring physical use of a writing instrument, or electronic equivalent thereof.

In light of the foregoing cogent explanations, it is believed clear that all claims relate to statutory subject matter and it is respectfully requested that the rejection under 35 USC §101 be withdrawn and the application be allowed.

Regarding *Ex parte Bowman*, applicant appreciates that the Office has noted that this decision is nonprecedential. In addition, in applicant’s view the decision is not remotely relevant to the present application because the facts in *Ex parte Bowman* were quite different. The Board found that:

The Examination Guidelines for Computer-Related Inventions are not dispositive of this case because *there is absolutely no indication on this record that the invention is connected to a computer in any manner (emphasis added)*.

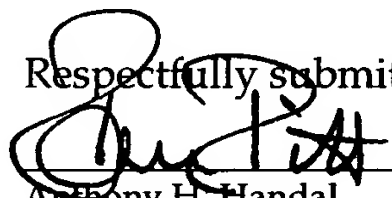
In contrast, applicant’s specification contains many references to computer implementation of various aspects of the claimed invention. It is also to be understood that the invention may have more or less manual embodiments. For example the novel latent payment draft or first and/or second bills of exchange might, especially in an emerging market, be handwritten or hand completed upon a form that was at some point computer-generated. On the other hand process embodiments such as are defined by claim 100 which include automated system comparison of the pro-forma invoice with the invoice for document verification in the trade finance process, would clearly be implemented by a computer or equivalent.

The practical world of import-export trade, where the present invention finds application, utilizes paper and electronic documents as established by convention and



international treaty with the effect of law, for example as are referenced and incorporated in the specification of this application. Thus, as described in applicant's specification (page 32, lines 21-28) standard practices for bills of exchange are defined in the League of Nations Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes, (Geneva, 1930), which requires a manual signature on a paper document, and in a subsequent not-yet-implemented revision called the UNCITRAL convention, which enables electronic signatures. Since use of an electronic bill of exchange has not yet been implemented in the UNCITRAL Convention the creation and signing of paper documents are significant aspects of the practice of the invention.

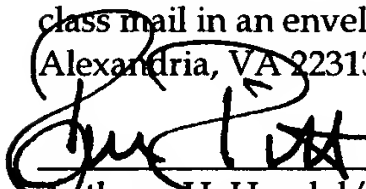
In view of the above amendments and the discussion relating thereto, it is respectfully submitted that the instant application, as amended, is in condition for allowance. Such action is most earnestly solicited. If for any reason the Examiner feels that consultation with Applicant's representative would be helpful in the advancement of the prosecution, he is invited to call the telephone number below for an interview.

Respectfully submitted,  
By:   
Anthony H. Handal  
Reg. No. 26,275 Ph: (212) 536-4870  
Roger Pitt  
Reg. No. 46,996 Ph: (212) 536-4867

KIRKPATRICK & LOCKHART LLP  
599 Lexington Avenue (32nd Floor)  
New York, NY 10022-6030

**Certificate of Transmission**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope, postage prepaid, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 24, 2005.

  
Anthony H. Handal/Roger Pitt  
Reg. No. 26,275/Reg. No. 46,996

28